TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 741.

THE UNITED STATES, APPELLANTS,

vs.

PATRICK WELCH.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 14, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 741.

THE UNITED STATES, APPELLANTS,

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PATRICK WELCH.

APPEAL FROM THE COURT OF CLAIMS.

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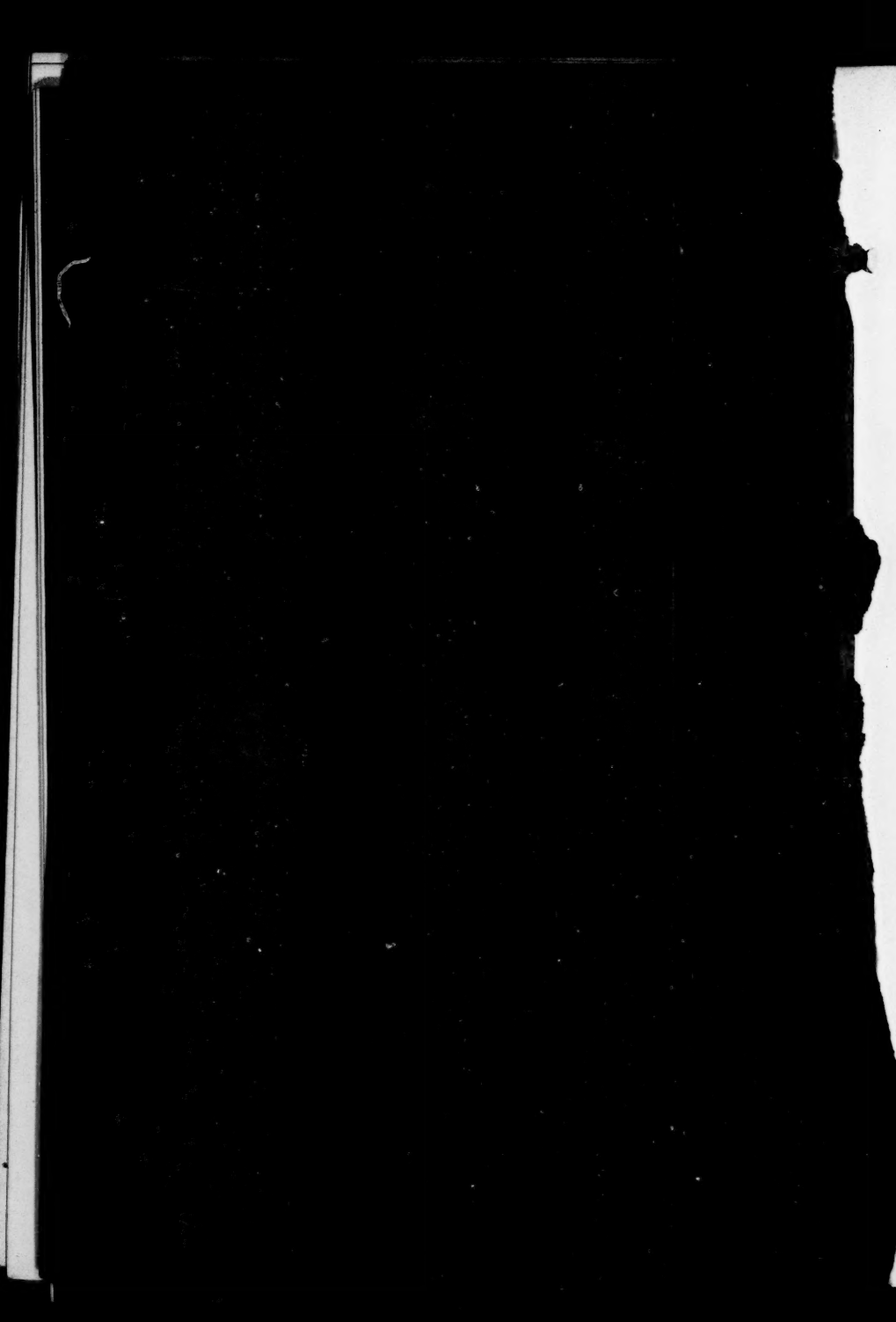

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1 In the United States Court of Claims.—December term, 1868.

[*No.* 5293.—*Filed Feb.* 16, 1869.]

To the honorable the judges of the Court of Claims:

Your petitioner, Patrick Welch, a citizen and resident of the city of Washington, District of Columbia, respectfully represents that he was, on the 30th day of June, A. D. 1866, employed in the civil service of the United States at Washington City, District of Columbia, as an employee in said service of the United States, in connection with and under the direction of the proper officers of the Treasury in said city; that your petitioner continued in said service as said employee, acting in the capacity of a laborer, from said date until and including the 30th day of June, A. D. 1867; that during said period your petitioner was paid for his said service at the rate of one and three-fourths dollars per day, and was paid for said period about the sum of five hundred forty-seven $\frac{75}{100}$ dollars.

Your petitioner further avers, that by virtue of the provisions of a joint resolution of an act of Congress, approved February 28, A. D. 1867, your petitioner became, and is entitled to receive, as an additional compensation for said service, a sum equal to 20 per centum of the amount paid your petitioner for his said service, computed on said sum, from the 30th day of June, A. D. 1866, to June 30th, A. D. 1867, inclusive.

Your petitioner further says, that upon said computation, as provided by law, your petitioner became and is entitled to receive from the United States about the sum of one hundred and nine $\frac{55}{100}$ dollars.

Your petitioner further avers, that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said Government; that he has made application to the proper department for payment of the claim herein stated, but without success.

Your petitioner, therefore, by reason of the premises, asks judgment for the whole amount herein claimed, to wit: one hundred and nine $\frac{55}{100}$ dollars.

CHIPMAN & HOSMER,
Solicitors for Petitioner.

DISTRICT OF COLUMBIA,
County of Washington, ss.:

Personally came before me, a justice of the peace in and for said District, Patrick Welch, who, being duly sworn, says that he is the petitioner in the foregoing petition; that no assignment of the claim therein stated has been made, except as in said petition stated; that the amount claimed is due to the petitioner, after allowing all just offsets and credits; and that the matters and things in said petition stated are true.

his
PATRICK + WELCH.
mark.

Witness: A. D. BROCK,
J. B. PAYTON.

Subscribed and sworn to before me this 6th day of January, A. D. 1869.

R. H. MARSH, *J. P.*

2 In the United States Court of Claims, December term, A. D. 1873.

PATRICK WELCH
vs.
THE UNITED STATES. } No. 5293.—Filed M'ch 28, 1874.

And the said defendants, by their Attorney-General, come and make

answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of one hundred and nine dollars & fifty-five cents, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

3 In the Court of Claims.

PATRICK WELCH
vs.
THE UNITED STATES. } 5293.

At a Court of Claims held at the Capitol in the city of Washington, the 30th day of March, A. D. 1874, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Patrick Welch have and recover of and from the United States the sum of one hundred and eight dollars eighty-five cents, ($108.85.)

A true copy of record.

4 In the Court of Claims of the United States, December term, 1873.

PATRICK WELCH
vs.
THE UNITED STATES. } No. 5293.

From the judgment rendered in the above-entitled cause on March 30, 1874, in favor of the claimant, the defendants, by their Attorney-General, on the 13th day of April, 1874, make application for and give notice of an appeal to the Supreme Court of the United States, the judgment in said case being such as will affect a class of cases.

Filed April 13, 1874.

JOHN GOFORTH,
Ass't Att'y-General.

It is hereby certified that the judgment in the above cause is one which will affect a class of cases.

C. D. DRAKE, *C. J.*

5 Ordered, that the appeal be allowed as prayed for.

By the court.

APRIL 13, 1874.

6 Court of Claims.

PATRICK WELCH
vs.
THE UNITED STATES. } No. 5293.

Findings of fact and conclusions of law.—Filed March 30, 1874.

This case having been heard before the chief justice and judges of

the Court of Claims, at the city of Washington, on the 28th day of January, 1874, the court, after due deliberation upon the proof and evidence given at the trial, does hereby, at the time of rendering judgment, find the following facts:

During the fiscal year beginning July 1, 1866, and ending June 30, 1867, the claimant was employed as a laborer on the Treasury extension in the city of Washington. He was employed and paid at the same rates then paid by private individuals or corporations for like services, and was thus in the service of the Government on the 28th day of February, 1867. During the fiscal year he received $544.24; 20 per cent. of which amounts to $108.85.

7 Specific appropriations were made by Congress, prior to the time that the claimant's services were rendered, for the construction of the north wing of the Treasury building. Under such appropriations contracts were entered into for finished work comprehending both materials and labor, materials separately, and labor by the day separately. The services claimed were rendered under the latter contracts. The consideration agreed upon was the highest market wages. The payments upon these contracts were made from the specific appropriations above mentioned in the same manner as the expenditures for the construction of all other buildings erected under the supervision of the supervising architect of the Treasury.

And upon the foregoing facts the Court of Claims, for the purposes of an appeal, decides, as

CONCLUSION OF LAW.

8 That the claimant was in the civil service of the United States within the meaning of the joint resolution 28th February, 1867, (14 Stat. L., p. 569,) and should recover 20 per cent. upon the compensation set forth in the foregoing finding.

By the court.

9 United States Court of Claims.

THE TWENTY PER CENT. CASES.—FILED MARCH 30, 1874.

GEORGE A. BELL
v.
THE UNITED STATES, (AND OTHER CASES.)

NOTT, J., delivered the opinion of the court:

When the cases arising under that statute which has been familiarly known as the twenty-per cent. resolution, February 28, 1877, (14 Stat. L., p. 569,) first came before this court, it was held that they fell into two general classes. The first, it was thought, consisted of those persons who were "in the civil service of the United States, at Washington," and whose salary or pay was "directly fixed or indirectly limited by law." The second class, it was supposed, consisted of those persons whose services were such as might be rendered to any employer; whose wages came under the restrictions of no statute or departmental regulation, and who received for their services whatever such services might be worth in the place where they were rendered. There are indeed services not necessarily connected with the Government as a government, such as those of the public gardeners, but Congress have attached to them the characteristic which distinguishes the civil service from

ordinary employments, namely, a fixed and arbitrary rate of compensation. Such cases, we thought, fell within the first class, not because of the nature of the services rendered, but because Congress had placed them there by making them quasi public employments.

The first class of cases (including those just referred to) was carried to the Supreme Court by appeal, and the judgment of this court affirmed. The second class has never been taken to that tribunal. But it is said that the attention of the Supreme Court was called to them upon the argument of the first, and that the broad language used in the opinion of that court was intended to cover all cases that could possibly arise under the joint resolution. The Supreme Court does indeed say that persons are "properly in the civil service, if they were employed by the head of the Department, or of the Bureau, or any division of the Department charged with that duty, and authorized to make such contracts, and fix the compensation of persons employed, even though the particular employment may not be designated in any appropriation" act. And the court adds that "many persons not employed as clerks and messengers of the Departments are in the public service by virtue of an employment by the head of the Department or by the head of a Bureau of the Department authorized by law to make such contracts, and such persons are as much in the service, within the meaning of the joint resolution, as the clerks and messengers employed in the rooms of the Department building." The twenty per cent. cases, (7 C. Cls. R., p. 290.)

10 Notwithstanding the scope of this language, and the assertion that the attention of the Supreme Court was called to the numerous classes of cases awaiting decision here, we remain of our former opinion, namely, that the cases fall into two classes: the former consisting of persons whose compensation was arbitrarily fixed or indirectly limited by Congress; the latter, of persons whose wages were unrestricted and determinable only by their highest market-value at the place where they were rendered.

As to the reasons upon which this distinction stands, it is sufficient to quote what this court formerly said in Baker's case, (4 C. Cls. R., p. 227:)

There have always been, and were when the joint resolution was passed, two classes of persons in the employment of the Government. The first consists of those whose services are special, and to be distinguished from ordinary employments. They make up the civil service of the United States, and their compensation is directly fixed, or indirectly limited, by law. The second class consists of those persons whose services are such as might be rendered to any employer; whose wages come under the restrictions of no statute, and who receive for their services whatever such services may be worth in the place where they happen to be rendered. For services which are connected with the Government, as a government, and which, being special, have no market-value, the salary, pay, or other compensation is necessarily fixed by law; but where the Government has become a builder or manufacturer, it has never attempted to regulate by law the fluctuating value of labor, which, as with other commodities, competition and the business of the country would control despite legal restriction, nor to overbid other employers in the labor market, but has paid to its artisans and workmen the same prices for their industry which other employers might be paying for the same services in the same place. Generally this policy has been left to regulate itself between the demands of labor on the one hand, and the restraining duty of the officers charged with the hiring of

workmen on the other. Occasionally it has been prescribed by law. Concerning persons in the civil service, we find in the statutes constant reference to the "pay authorized by law." In the act 23d April, 1854, (10 Stat. at L., 276,) to that of "messengers" and "watchmen" of the different Executive Departments of the Government in Washington, and to that of the "public gardener" and the "police at the Capitol;" in the act 18th August, 1856, (11 Stat. L., 145,) to that of "laborers in the employment of the Government in the Executive Departments, and on the public grounds in the city of Washington," which, for example, the act fixes at "an annual salary of $600 each;" in the act 14th March, 1864, (13 Stat. L., § 6,) to that of "females whom the heads of Departments are authorized to employ" "at an annual compensation not exceeding 600;" in the act 2 March, 1865, (13 Stat. L., 445, 450,) to that of "temporary clerks," with a special proviso that they "be classified according to the character of their services." But, with respect to persons not in the "civil service," we find no provisions of law regulating their pay except such as direct that "the hours of labor and the rate of wages of the employés in the navy-yards shall conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity of the respective yards." Act 16th July, 1862, (12 Stat. L., 587.)

At the time when the joint resolution was passed the compensation of the great body of persons in the civil service at the seat of Government had been left for a long time unrevised, and had fallen into great disorder.

11 By reason of the depreciation of gold and silver and the still greater depreciation of paper money, wherewith these persons were paid, their compensation had become incommensurate with the increased expenses of the times, and particularly with the increased values set upon property and tenements in the city of Washington, and had fallen far behind the increase allowed by the Government to that other body of persons whose rate of compensation kept pace with that paid by private employers. Thus, the very officer of the Treasury whose decision stopped the payment of these claims, and upon whose judgment depended in this matter alone more than half a million dollars, was at that time receiving exactly the same compensation received by one of these claimants, and the average of them all fell but 30 per cent. below his salary. That salary had not been increased since 1799; act 2d March, 1799, (1 Stat. L., 729;) and but once since the office of Comptroller of the Treasury was established in 1789; act 2d September, 1789, (1 Stat. L., 65.) On the contrary, it had been diminished by being paid in depreciated paper-money instead of gold and silver. The members of that Congress which fixed the Comptroller's salary at $3,500 a year, themselves received but about $1,200. The per diem allowance received by them in fact amounted, for the three laborious sessions of their two years' term of office, to $2,406. But the pay of that Congress which passed this 20 per cent. resolution had advanced to $5,000 a year exclusive of mileage. The expenses of life had also more than trebled between 1799 and 1867. Taking them at the standard, we may estimate that the Comptroller's salary in 1867 should have been $9,000 a year in gold; or, taking the congressional salary at the standard, we may conclude that if the Congress which increased the pay of Comptroller in 1789 had legislated in 1867, they would have advanced the salary to $12,000 a year in Treasury notes.

A third standard of comparison may be found in the wages paid to these claimants, for it is pretty certain that the artisans of that day would not have received (in gold) a fourth part of the Comptroller's sal-

ary; whereas these have received in the average 70 per cent. of his salary, and in one case an amount exactly equal.

In these intervening seventy years the daily toil of the artisan has diminished, but the labor and duties and responsibilities of the Comptroller's office have been vastly augmented. They embrace the work of examining all accounts settled by the First and Fifth Auditors, and of certifying the balances arising thereon to the Register; of countersigning all warrants drawn by the Secretary of the Treasury which may be warranted by law; of reporting to the Secretary the official forms to be issued to the different officers for collecting the public revenue, and the manner of keeping and stating the accounts of the persons employed therein; of superintending the preservation of the public accounts subject to his revision, and providing for the payment of all moneys which may be collected; of superintending the recovery of all debts due to the United States, and directing legal proceedings to enforce their prompt payment, and of laying before Congress annually a list of such officers as shall have failed to make the settlements required by law. (Act 3d March, 1817, 3 Stat. L., 367, §§ 8, 10, 13, 14.) The single requirement that all warrants drawn by the Secretary of the Treasury "which shall be warranted by law" be countersigned by the Comptroller, obliges that officer to pass, to a certain extent, upon the legality of every payment made by the United States; and in the fiscal year to which this twenty per centum applies there were 40,814 warrants drawn, requiring of the Comptroller 40,814 signatures, given with his own hand.

But these cases furnish a further illustration. They disclose forty-
12 five bank-note printers, in a Bureau of the Treasury, whose yearly wages amounted to $111,024. The largest received by any one man was $3,500; the smallest, $2,039; three of the forty-five were above $3,000; fifteen above $2,500; all but nine above $2,200. In the same Bureau the employés of the civil service, who were watchmen or laborers, received but $600; those who were messengers, but $840; those who were clerks, but $1,200, $1,400, $1,600, or $1,800. The superintendent of printing, under whom these men worked, received but $2,000; the chief of the currency division, by whom they were employed, but $3,000. The deputy comptroller of the currency, an official whose responsibilities are of so grave a nature that he is required by statute to give security to the amount of $50,000, received less than the wages paid to one-third of the workmen; and, finally, chiefs of divisions in the Auditors' and Comptrollers' Offices who pass in a single year upon accounts literally embracing millions of dollars, received less than the least of these claimants.

The salaries and pay which Congress undertook to increase by law were the salaries and pay which were regulated by law. Cases, indeed, are spoken of "where no salary is fixed by law," but those were the cases of temporary clerks, persons in the civil service, and whose salaries, though not directly "fixed," were nevertheless indirectly limited by law. Persons also are enumerated in certain military and naval offices, but they were persons who, acting under military and naval authority, still were, as we held in Clark's case, (1 C. Cls. R., p. 145,) "persons engaged in the civil service." The joint resolution was not a wild gratuity, a naked, needless gift of the hard-paid taxes of the nation, but was founded on an intent to do justice to those persons in the civil service who had not been compensated justly for their services. The joint resolution was therefore a remedial statute to be construed by the well-known tests, "the old law, the mischief, and the remedy." The "old law" here was the various statutes establishing, regulating, and limiting the compen-

sation of persons in the civil service. Where there was no old law, and employés received for their services what they were worth among men, the new law did not apply; they who had no wrongs to be righted needed not the remedy which it provided. The "mischief" was the unjust compensation which by the changed circumstances of the nation had come to be paid to persons in the civil service, occasioning irritation, discontent, and a sense of wrong in the minds of men, and leading to bribery, extortion, and other evil practices. The "remedy" intended by the joint resolution lies not in flinging the money of a people struggling with a great debt to those who received for their services their highest market-value, merely because such services chanced to be rendered at the seat of Government, where persons in the civil service chiefly are employed, but in faithfully extending the statute to all those actually in the "civil service of the United States," whose compensation was restricted by law, and who, being circumscribed in their means of subsistence by the arbitrary operation of law, could look only to the law for the bettering of their condition. And therefore it is that the joint resolution, though loosely and recklessly drawn, is still careful to say that the "20 per centum" to be allowed and paid shall be to "persons now employed in the civil service of the United States."

The phrase limits and controls all that follows. The "clerks, messengers, watchmen, and employés" mentioned, are not all the persons employed by the Government at Washington, but only the persons employed "in the civil service" of the United States, and whose service was rendered within the functions of the offices named. These claimants
13 were not persons in the civil service; they were simply hired by the job, or the day, to do common mechanical labor, and paid for their work all it was worth in the market. Instead of being public servants, they were merely public contractors. The Government owes them no gratuities more than it owes all other contractors, and it has paid to the least of them more than double the average which it pays to persons in the civil service at Washington. "It is the business of the judges so to construe the act as to suppress the mischief and advance the remedy;" and we shall most assuredly do so if we extend it to all who are both within the letter and the spirit of the joint resolution, and to none beside.

The cases now before the court present several distinct questions additional to the general question before considered, and fall into the following classes:

I.—*Plate printers in the Bureau of Engraving and Printing in the Treasury Department.*

These men were employed as printers and paid at an agreed rate for the amount of work done. They were allowed to employ assistants, who were paid from their earnings, though paid directly by the disbursing officers of the Department, the sums thus paid being deducted from the gross earnings of the claimants. The evidence before us does not show the amount of the gross earnings, but only of the balance or net earnings after the assistants have been paid. If these men are entitled to recover the twenty per cent., it seems clear to us that it must be estimated and can only be estimated upon the gross earnings paid to them by the Government. The Government was a stranger to their assistants in a legal sense, and was concerned only in the gross amount paid to them. It is not pretended that the assistants could in their turn come in and claim twenty per cent. upon the amount allowed them by their employers, the plate printers. And it is to be noted that the net

earnings in some cases exceeded $3,000 per annum, and non constat but that the gross earnings may have exceeded $3,500 per annum.

The joint resolution is limited by the terms of its second proviso to persons "whose salaries as fixed by law" do not "exceed $3,500 per annum." Did Congress ever contemplate giving twenty per cent. upon the earnings of one man whose compensation exceeded $3,500 per annum, and withholding it from another whose salary was fixed by law above that amount? We think not. The proviso indicates that the pay to be increased was pay "fixed by law;" and our conclusion is, that though these men were employés in one sense within an Executive Department, yet they were not persons "in the civil service of the United States" within the meaning of the joint resolution, but contractors whose contract work from prudential reasons was brought within the immediate supervision of an Executive Department.

II.—*Laborers on the Treasury Extension.*

The evidence of the Supervising Architect in this class of cases very clearly illustrates the actual existence of the legal classification which this court, as before stated, originally made. He says: "The labor performed by them was not rendered as duties of civil employés for whose services as such any appropriation for the civil service of the Government at Washington provided compensation. Specific appropriations were made for the construction of the north wing of the Treasury
14 building. Under such appropriations contracts are entered into for finished work, comprehending both materials and labor; materials separately, and labor by the day separately. The services of the parties in question were rendered under the latter contract. The consideration agreed upon for their labor was the highest market-wages. The payments upon each of these contracts were made from the specific appropriations above mentioned." We think that persons whose services were rendered under contracts for "finished work," at the "highest market-wages," cannot be considered as employés in the civil service.

III.—*Laborers in the Commissary Department.*

It is noticeable that while the Quartermaster's Department is enumerated in the joint resolution, and also the Commissary-General of Prisoners, yet that the Commissary Department is unnamed. These cases present the question whether the Commissary Department is a part of the Army or a Bureau of the War Department. The earlier and the later statutes generally treat the Commissary-General as simply a military officer, though there is one statute which indicates that the office is a "military bureau" of the War Department. Act 4th July, 1836, (5 Stat. L., p. 117, § 5.) The joint resolution extends to "the following-named Departments or any Bureau or division thereof," and among these Departments is the War Department. If it was intended to include under the term "Bureau" or "division" the Commissary Department, it was needless to specifically name the Quartermaster's Department. On the contrary, it is not easy to understand why it should have embraced the other military bureaus, such as the Paymaster-General, the Commissary-General of Prisoners, the Bureau of Refugees, the Quartermaster's, and have omitted the Commissary Department. If the usual rule of construction be applied, the naming of some of these military bureaus in the joint resolution must be deemed to exclude those not named. But it is at the same time a moral certainty that Congress never intended to exclude one military bureau while it benefited all the

rest. The history of this piece of legislation shows that it was made up of numerous amendments, hastily thrown together, and our conclusion is that it was intended to apply to the Commissary Department.

IV.—*Laborers in the Medical Department of the Army.*

The same question and the same embarrassment of construction arise with regard to this class of claimants that have been pointed out in the preceding class. The Surgeon-General in an official report on this subject, says: "The Medical Department is not made a bureau of the War Department by any law known to me. By the term 'Medical Department,' or more correctly 'Medical Department of the Army,' is understood not a bureau or office, but the entire organization of means and appliances for conserving the health of the Army and taking care of the sick and the wounded." He adds: "The Surgeon-General's Office is recognized in the annual appropriations made by Congress as a part of the War Department, but the claimant was not in the Surgeon-General's Office." We think that this latter fact distinguishes these cases from the preceding, and that the parties were civil employés of the Army and not in any sense in the civil service.

15 V.—*Laborers employed by the Quartermaster's Department at Washington, but whose services were rendered at Arlington, etc.*

However inconsistent it may seem for Congress to have allowed an increase of compensation to one man employed by the Quartermaster's Department, on this side of the Potomac, and to have withheld it from another, employed by the same officer, but sent to the other side of the river, it is clear that the joint resolution is limited by its terms to "persons now employed in the civil service of the United States at Washington." A person employed at Arlington is certainly not employed at Washington, although, as is claimed here, the hiring and the paying were both done in Washington. The fact that the contract of service had its inception here, and that final performance under it, that is to say, payment, was also made here, does not place the employment here; and we cannot, by any liberality of construction, extend the joint resolution to a person whose employment was elsewhere.

VI.—*Employés of the Secret-Service Division of the Treasury Department.*

In this class the persons employed were under the direction of the Solicitor of the Treasury, and the duty performed appertained to the Treasury Department. It consisted chiefly in the detection of counterfeiters, and the parties "were stationed at no particular place except as their duties required." As we have previously held, in the case of Marche, (5 C. Cls. R., p. 525,) it was not the accidental presence of the claimant in the city of Washington which entitled him to the benefits of the joint resolution, but it was necessary that the functions of his office lie within the Treasury at the seat of Government. We do not understand that these detectives were necessarily employed here, nor, as a matter of fact, that they actually remained here. Their services were of a migratory character, and probably the smallest part of their employment was that which was rendered in Washington. Still, while liable to be sent elsewhere, they were stationed here. This was their only permanent place of official abode. Their salaries were fixed by law;

they were in the civil service as assistants of the Solicitor of the Treasury; and they were in the civil service in a greater or less degree at Washington. Our conclusion is that they are entitled to recover.

VII.—*Cases where the statute of limitations is pleaded.*

A large number of the cases now before the court, including some in the preceding classes, were not brought until the 30th of June, 1873. The defendants set up the statute of limitations as to the eleven-twelfths of each demand. It is conceded that the suit was brought in time, so far as the last month's pay is involved, but it is insisted that the suit is barred as to all pay accruing before the first day of June, 1867. If the joint resolution, contrary to our construction of it, extends to all employés of the Government, as well as to those in the civil service proper, it is evident that this theory of monthly payments cannot be universally applied. Some of the men were employed by the day, and some by the piece, and the question must arise whether a cause of action accrued to them strictly, as each day's work was done, or each piece of work finished, or whether there was a running account extending to the date of the last item. But with regard to those persons actually in the civil service, and entitled beyond question to the benefits of the joint resolution, it is undeniable that their salaries were generally paid monthly. But on
16 looking into the statutes we do not find that there is any provision of law to that effect. The salaries are almost invariably spoken of as "annual salaries." Occasionally there is some provision, as in the case of the judiciary, that they be paid quarterly; but ordinarily the time of payment is not fixed by law. Further than this, the joint resolution does not designate a time of payment. "There shall be allowed and paid," it says, "an additional compensation of twenty per centum on their respective salaries, as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year." And it further provides that where a person "shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be paid on the amount such person is so entitled to receive for services within said year." It is, therefore, by no means clear that any portion of the twenty per centum was payable until the expiration of the fiscal year, and we are inclined to say, for these reasons, that a party's claim did not accrue until the fiscal year had ended.

Our conclusion, consequently, is that in five of the preceding classes of cases the Government is entititled to judgment. But the language of the Supreme Court before quoted is broad enough to warrant an inferior tribunal to come to a directly opposite conclusion. We are, however, inclined to believe that the Supreme Court could not have intended that its opinion should be applied to cases so inherently different from those before it as we consider the most of the present cases to be. Nevertheless, we are not unmindful of the fact that our conclusion is not free from doubt, and that the claimants, by reason of the smallness of their respective demands, have not the right of appeal to the Supreme Court. We therefore direct a judgment to be entered pro forma against the Government in one of each class of cases, so that the correctness of our conclusions may be reviewed by the Supreme Court. The residue of the cases which have been submitted will remain under advisement until the decision of the Supreme Court in those appealed.

Judgments will be entered for the claimants under this opinion in the following cases:

George A. Bell vs. The United States for	$236 86
Patrick Welsh vs. The United States for	108 85
John Wild vs. The United States for	124 80
James Hannan vs. The United States for	84 00
O. A. Hoffman vs. The United States for	143 60
Thomas Dorkin vs. The United States for	137 62
Maurice Tucker vs. The United States for	360 00
John Smith vs. The United States for	71 00
John Donnelly vs. The United States for	65 80
J. D. Townley vs. The United States for	125 65
John Cullen vs. The United States for	206 96
Thomas Fugitt vs. The United States for	160 55
Cha's Wood vs. The United States for	67 68
Timothy Craven vs. The United States for	69 41

17 DRAKE, CH., J.:

I do not wish to be considered as taking part in the decision just read.

It is my opinion that the repeal of the joint resolution of February 28, 1867, left this court without jurisdiction of any action for the recovery of anything thereunder.

Filed March 30, 1874.

18 In the Court of Claims.

PATRICK WELCH *vs.* THE UNITED STATES. } No. 5293.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for defendants for the allowance of an appeal, as filed in the clerk's office, April 13, 1874, and of the order of the court allowing the same; of the findings of fact and conclusion of law thereon, on which the court founded its judgment, the opinion of the court, and the opinion of Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 14th day of April, 1874.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 741. The United States, appellants, *vs.* Patrick Welch. Court of Claims. Filed 14th April, 1874.

In the Supreme Court of the United States.

DECEMBER TERM, 1873.

THE UNITED STATES *vs.* PATRICK WELSH.

No. 741.

APPEAL FROM THE U. S. COURT OF CLAIMS.

BRIEF OF APPELLEE.

The Twenty Per Cent. Cases.

We believe that the cases to be noticed in this brief involve the identical questions of law decided by this court, in 13 Wallace, and that no new material questions will be found in these records. But the appeal and the reasons given therefor would seem to invite a re-examination of some of the questions, and this we will briefly give:

The points on which the Attorney General chiefly relies in this appeal, are found in Baker's case, 4 Court Claims R., p. 227. They are given at length in the opinion of Nott, J., filed in the cases.

It is stated in this opinion that when these cases first came before the Court of Claims, it was held that they fell into two general classes, viz.: *first*, those who were "in the civil service of the United States at Washington," and whose salary or pay was "directly fixed or indirectly limited by law;" and, *second*, those persons whose services were such as might be rendered to any employer, whose wages came under the restrictions of no statute or depart-

mental regulation, and who received whatever their services were worth in the place where they were rendered; and the learned judge informs the court that it was the first class that were decided in 13 Wallace, and that the second class have never been appealed.

The distinction suggested between these classes, we think, is hypothetical, and does not exist, in fact. Of this supposed second class, we may remark that those persons included in the first class performed no service that might not have been rendered to any corporation or person. A salaried officer, clerk, messenger, watchman, or other employee, may perform precisely the services for a corporation, and be designated by the same name as those similarly employed for the Government. This was true of all of the first class who have received their 20 per cent. Hence, the learned judge has included those of the first class who, it is conceded, were properly paid their 20 per cent. among the second class who have never appealed to this court, and his supposed distinction, therefore, falls to the ground. For, if his first class were properly paid, they cannot belong to the second, who he thinks cannot be paid.

Again, in this supposed second class are embraced those whose wages were not restricted by statute or departmental regulations. We think this quite impossible, for, unless restricted by statute or regulations, directly or indirectly, this employment would be an usurpation, and without any authority whatever. But this is not pretended, nor can it be shown to have been the case, on the contrary, no employe of Government here sueing fails to show lawful employment by the Government, as we shall hereafter see. Again, in this supposed second class, a third and last distinction is suggested by the learned judge, viz., that these employes of Government received for their services what they were worth in the place where rendered. We doubt not this was true of very many of the first class, for there

are always drones who receive not only all, but much more than they earn. These distinctions may be again noticed. We allude to them preliminarily, because they are given as the reasons for this appeal. If they should be found not to exist in fact, we suppose the court will give judgment for claimants on the principles of law previously established.

Questions settled.

Fortunately for this discussion, this court has decided certain questions involved in it. Let us see if we can ascertain precisely the extent of these decisions.

In Fitzpatrick's case, 13 Wallace, p. 568, it is decided, that "certain described persons and classes of person are plainly entitled to the provision, whether regarded as officers or *as mere* employés." And again, as to the question who are employés, the court say that this word was "intended to embrace a class of persons other and different from the persons having appointment as officers." And in a classification of offices, the court find two classes, civil and military. Of the former, there are three classes, political, judicial and ministerial. To the latter, ministerial, the court refer these employés, and say, "neither a commission nor a warrant of appointment is necessary to entitle an employe to the benefit of the provision under consideration, provided he was actually and properly employed" in any of the described Departments, Bureaus, &c. No question is here made that the appellees were employed by one of the described Departments, Bureaus, &c., and if this court adhere to its decision, they must be held to be employes. Again what it is to be properly employed is not left to doubt: the court say, "persons so employed are properly in the service if they were employed by the head of the Department or of the Bureau or division of the department charged with that duty, and authorized to make such contracts and fix the compensation of the persons

employed, even though the particular employment may not be designated in any appropriation act." "Many persons not employed as clerks or messengers of a department are in the public service by virtue of an employment by the head of a Department, or by the head of a bureau of the Department authorized by law to make such contracts, and such persons are as much in the civil service within the meaning of the joint resolution as the clerks and messengers employed in the rooms of the Department building."

U. S. *v.* Bellew, 2 Brock., 280; Graham *v.* U. S., 1 C. Cl's R., 380; Cases in 3 C. Cl's R., 257, 265; Story's Constitution, sections 791, 792; Webster as to the meaning of the words "civil," "service," and "employé" or "employed;" Com. *v.* Sutherland, 3 L. and R., 149.

Here the cases at bar are perfectly described by this court, if we are capable of making any true analysis of what this court has decided. These claimants are employés, and they were employed by a head of department, or bureau or division, charged with the duty and authorized to make the contract.

In noticing each case separately it will be found that the officer making the contract with the employé was authorized to do so; and if only color of authority appears, we think the proper rule would be that the lawful authority for making the contract would be presumed, and the burden of proof to show that the officer was without authority would fall upon the defendant.

Evidently the court must render judgment for these claimants, unless it can be shown that their employment differs materially from that of the persons mentioned in 13th Wallace, or differs from the description of any new class entitled to compensation under the joint resolution in question.

Perhaps the best manner to ascertain the truth as to these claimants will be to examine separately the facts in their cases.

PATRICK WELSH'S CASE, No. 741.

STATEMENT OF FACTS.

The court below find the facts to be that during the fiscal year 1866–'67 the claimant was employed as a laborer on the Treasury extension in the city of Washington; that he was paid at the rates then paid by private individuals or corporations for like service, and was in the service of the United States on the 28th of February, 1867, and received as a total compensation $544 24; twenty per cent. of which amounts to $108.85. That specific appropriations were made by Congress prior to the time claimant's service was rendered for the construction of the north wing of the Treasury building; and under this appropriation a contract was made with claimant for labor, and at a price equivalent to the highest market wages, and he was paid out of the specific appropriation for the Treasury extension under the supervision of the supervising architect of the Treasury. Upon this finding of fact the court entered a *pro forma* judgment, but Mr. Justice Nott, in his opinion, says: "We think that persons whose services were rendered under contracts at the 'highest market wages' cannot be considered as employés in the civil service." This court has decided that the joint resolution applies to all persons employed by the head of a department, bureau, or division charged with the duty and authorized to make the contract with and to fix the compensation of the person employed, even though the employment may not be designated in an appropriation act.

Here, then, we have the case of a person employed by the supervising architect of the Treasury Department. The contract of employment, the findings say, was based upon the compensation for like employment in open market.

Two questions will arise here in determining whether this case comes within the decision of this court: First,

was the claimant employed by the head of a department, bureau, or division of a department, charged with the duty and authorized to make the contract of employment and fix the compensation of the person employed? Second, was the employment such as is described in the joint resolution?

In answer to the second question, it is only necessary to say that the person was not a military officer, nor in military service; and if in the employment of Government at all, he was in what this court has held the law to mean by the phrase "civil service."

In answer to the first question, we must first ascertain whether the person employed was contracted with by an officer authorized to make the contract and fix the compensation. The bureau or division presided over by the supervising architect of the Treasury Department is one of the largest and most important of the Government. Its duties are extensive, and we suppose it will not be questioned that in making the contract of employment, the supervising architect had ample authority.

The case is almost identical in the particulars now being noticed with Manning's case (13 Wall., 568.) He was a guard at the jail, employed by the warden. The warden's compensation was fixed by the Secretary of the Interior, but the guard was employed by the warden. Here the employment was by the supervising architect, who is an officer of the Treasury Department and the head of a bureau therein; and he was paid from an appropriation "in the same manner as the expenditures for the construction of all other buildings erected under the supervision of the supervising architect of the Treasury Department."

The distinguishing feature in this case from Manning's, and upon which we suppose the Government relies, is the fact that the compensation was fixed at the "highest market wages." This precise question we believe was not decided in the former cases; but we think it is plainly de-

ducible from those cases that this court will not inquire into the method adopted by the head of the bureau to ascertain a fair compensation for its employés.

We think if Congress had intended to exclude that class of employés, officers, clerks, messengers, or watchmen, whose compensation was fixed at a rate equivalent to the "highest market wages," it would have indicated such purpose in some unmistakable manner, but plainly the object of the act was not to equalize the civil service in any manner, but to add twenty per cent. to the gross compensation of all persons employed by the Government coming within the classes of those described.

We know, for example, that nearly all of the clerks, messengers, watchmen, and many classed as laborers in the departments, receive much more compensation than persons in like employment in private life. Scarcely one of these classes but receives more than the "highest market wages" for his services. If Congress had intended to exclude all such from the benefits of the act, Congress would not have made a thrust at day laborers by some vague provision which the courts were to use for the purpose of discriminating in favor of less deserving classes. To show that this cannot be a correct view of the law we need only refer to the fact that by the act of Congress approved July 16, 1862, (12 Stats. at Large, 587,) this very method of fixing the compensation was established for the employés of the navy yard; and yet the joint resolution in question refers directly and in unmistakable terms to the employés of the navy yard, and nearly all of this class have been paid either by judgment of the Court of Claims or without, and but few of this class of claims remain unpaid.

It would seem clear that if Congress intended to exclude those classes mentioned in the act, who by some accident or by law or by special contract were receiving the "highest market wages," Congress would not have distinctly extended the benefits of the act to a class, to wit,

navy yard employés whom it had directed the Secretary of the Navy to employ at a rate equivalent to wages paid for similar employment in private life.

But the language of the act is "employees of the Treasury extension." How are we to know that Congress meant to exclude any class of employés in the Treasury extension, when it has not indicated any such purpose by any language to be found in the act? The principles of statutory construction will not allow the court to interpolate the exception, "highest market wages." In Miller's case, decided by this court, (13 Wall., 568,) the claimant was an employé on the Capitol extension. It is true the findings did not show that his pay was equivalent to the "highest market wages," but if they had so shown we cannot see wherein the decision of the court could have been different. Suppose in all these cases it had crept into the finding of facts that the person bringing suit had been paid as much or more than they could have received anywhere in Washington for like employment, which we readily admit to be the case in most instances, would this court change its opionion of the law? We think not.

JOHN WILD'S CASE, NO. 738.

Statement of Facts.

Claimant was employed as a carpenter at the depot for receiving and distributing medical supplies, at Washington, under the medical department of the army, and by the authority of the surgeon general of the army. He was employed and paid at the rates then paid by individuals or corporations for like service. His wages were three dollars per day, and amounted during the fiscal year to $624, twenty per cent. of which amounts to $124.80.

In the opinion of the court below, made part of the

record by the Attorney General, Mr. Justice Nott adds: (Paragraph four of his opinion.)

"The Surgeon General's Office is recognized in the annual appropriations made by Congress as a part of the War Department, but the claimant was not in the Surgeon General's Office."

But the finding is clear that Wild was employed as a carpenter by authority of the Sugeon General of the army, and that the Surgeon General's Office is a part of the War Department.

This would seem to make it beyond doubt that the claimant was employed by competent authority, and comes within the class of persons described in the joint resolution. The learned judge, below, however, thinks that Wild was a civil employé of the army, but not in any sense in the civil service.

We here have a distinction hitherto unknown, either to this court or to the Court of Claims, to wit, a civil employé of the army not in the civil service. We think a moment's reflection will convince the court that the learned judge errs in this view.

Almost the entire body of employés of the War Department, from the secretary down to the laborer of that Department, are civil employés of the army. The same is true of many of the employés of the Quartermaster's and Commissary General's Department.

The joint resolution does not say nor does it mean that the civil employés mentioned in the act must not be civil employés of the army; for the act, itself, provides for the payment of enlisted men of the army, detailed on civil service. Wild was a carpenter and civil employé. He did not belong to the army or navy. But the law does not restrict the employé to the civil service of the army or navy, or the judicial, legislative, or executive branches of the Government. The language of the act is "employé in the civil service of the United States." It means that

the persons shall not be employed in the military service proper, nor in the naval service proper. We say *proper* for the law specially provides for the payment of the Navy and War Departments and the various bureaus and divisions thereof, and this service is to be distinguished from military or naval duty proper. Indeed they may, and in fact do, certain kinds of military or naval duty at the War or Navy Department as watchmen or messengers or laborers or mechanics, and yet be entitled to pay. Certainly those employed at the navy yard, at the arsenal, at the War and Navy Departments, and the different bureaus thereof, were all performing the same class of duty performed by Wild. They might all be excluded on the same ground that they were civil employés of the army or navy, but none of them were, and most of them have been paid.

We conclude then that the view suggested by the court below is error.

JAMES HANNAN'S CASE, No. 742.

Statements of Facts.

Claimant was a laborer in the commissary department at Washington. He was employed and paid at the same rates then paid by individuals or corporations for like service, and was thus in the service of the Government on the 28th February, 1867, receiving a total compensation of $420, twenty per cent. of which is $84.

The court find as conclusions of law, that the claimant was in the civil service of the United States within the meaning of the joint resolution, and that the commissary department is a division or bureau of the War Dupartment.

We have nothing to add to the suggestions of the court—paragraph 3 of the opionion.

H. O. HOFFMAN'S CASE, No. 740.

Statement of Facts.

The claimant was employed by the day as sexton at the Arlington Cemetery, in the State of Virginia, where his service was rendered. He was employed and paid at the same rates then paid by individuals or corporations for like service. He received $718, twenty per cent. of which is $143.60.

We have nothing to add to the suggestions of the court below, but simply call attention to paragraphs 5 and 6 of the opinion of the court.

THOMAS DURKIN'S CASE, No. 743.

Statement of Facts.

Claimant was employed at the Washington arsenal, in the city of Washington, by General George D. Ramsey, commanding that post, as a laborer upon daily wages. He was employed and paid at the rates paid by individuals or coporations for like service. During the fiscal year, 1866, 1867, he received $688.20, twenty per cent. of which is $137.64.

This case or its class is not specially referred to in the opinion of the court, and what its views are, we are unable to state. There was a large number of similar cases decided at the last term of the Court of Claims, as controlled by the decision of this court in 13 Wallace. Those judgments have been paid; and why this appeal is taken, we are unable to state, unless it be that the Attorney General is of opinion that the Court of Claims erred on the ground that the employés at the arsenal received the same rates as paid by individuals for like service. We have already noticed the effect of any such basis for the contract of

service, in connection with the Treasury extension cases, and need not add to the argument there made.

The arsenal is a part of the War Department; but if it were not the statute, would still apply, as it mentions the arsenal, in connection with the navy yard and other divisions and bureaus of departments.

In our brief below at the last term, when most of these cases were decided favorably to claimants, we made the following statement to the court, upon which we suppose judgment was entered. We have nothing further to add.

"There are two kinds of employés at the arsenal, viz., those hired by the day and those enlisted in the army. The claims here presented are those of civilian employés.

Enlisted men since 1862, (see act of July 5, 1862, 12 Stat., p. 505,) are enrolled as sergeants, corporals, and privates of the first and second class, and are paid as soldiers, out of the army appropriations. Civilian employés, such as those presenting their claims here, were designated according to the character of the work performed by them. They were employed under the authority of acts of Congress, of April 23, 1808, sec. 2, 2 Stat., p. 490; May 14, 1812, sec. 2, 2 Stat., p. 732; Revised Army Regulations, 1863, par. 1436 to 1441. Their per diem is fixed by the commanding officer of the post, subject to the approval of the chief of ordnance. As the ordnance department is a bureau of the War Department, and as employés of the arsenal are specially mentioned in the joint resolution, the law of the case would seem to be clear." (13 Wallace, 568.)

MAURICE TUCKER'S CASE, No. 745.

Statement of Facts.

Claimant was employed in the secret service division of the Treasury Department at Washington as detective, at

a monthly salary of $150; which was at the same rates then paid by individuals or corporations for like services; and he was thus in the service of the Government on the 28th of February, 1867. During the year he received $1,800, twenty per cent. of which is $360.

In all these cases the court below will observe that a stipulation appears upon which the finding is based; that the compensation was fixed at the rates paid by individuals or corporations for like service. Beyond this there was no proof in this or many other of the cases. It is admitted, however, for the reason that in our opinion the law will not discriminate against those who come within this category, and this for reasons already stated.

The facts and law of the case are given in paragraph 6 of the opinion of the court, to which we need add nothing.

JOHN SMITH'S CASE, No. 744.

Statement of Facts.

Claimant was a laborer, upon daily wages, at Lincoln hospital, in the city of Washington, and employed by the Quartermaster's department, at the same rates paid by individuals or corporations for like service. He received $355, twenty per cent. of which is $71.

A large number of similar cases were decided favorably to claimants at the last term of the Court of Claims, and paid upon the supposition that they came within the decision of the Supreme Court in 13th Wallace. We see no ground for appeal, except it may be upon the admission of fact in the record that claimant was paid at the rate given for similar employment by individuals or corporations for like service. The effect of such fact upon the law of the case has already been noticed, and we pass to—

JOHN DONNELLY'S CASE, No. 739.

Statement of Facts.

Claimant was employed by the Quartermaster's department, at the city of Washington, as watchman, laborer, and teamster, and was paid at the rates for like service in private employment. He received $329, twenty per cent. of which is $65.80. His services continued to the 30th day of June, 1867, and his suit was brought against the defendants on the 30th day of June, 1873.

The only new question here presented we suppose is the effect of the statute of limitations, which is pleaded in the case.

We may remark generally upon this point that claimants in these cases supposed, up to a recent date, that the accounting officers of the Treasury Department would not force them individually into the courts, and subject them to the expense of counsel fees, and many of them abstained from bringing suit altogether, while others were forced into court at the last moment.

An effort was made, when judgment was rendered by this court in prior cases, to secure payment through the accounting officers of the Treasury without subjecting the Court of Claims to the immense labor of trying individual cases, or the claimants to the expense thereof, but the accounting officers persistently refused to recognize the decision of the Supreme Court futher than to control payment of the judgments rendered in that court, and many a poor creature is walking the streets of Washington to-day destitute, who have lost now even the right to sue in the Court of Claims, because they still had faith in the justice of government, and withheld their claims from the hands of attorneys.

But this cannot affect the law of this question, and we ask pardon of the court for suggesting it.

At the trial below, upon this question of the statute of

limitations, we submitted the following view which we think the law of the case:

"It is suggested by the Assistant Attorney General that claimants whose petitions are filed as late as the 30th of June, 1873, are barred by the Statute of Limitations for compensation prior to the 30th of June, 1867.

"Without going into the question of the different dates when petitions were filed, we hold that the act clearly means that claimants should receive 20 per cent. upon the gross amount of their compensation for one year, beginning the 30th of June, 1866, and ending the 30th of June, 1867. We think the language of the act determines this according to our view. It is, naming the persons, &c., that they shall receive 'an additional compensation of 20 per centum on their respective salaries as fixed by law, or where no salary is fixed by law, upon their pay, respectively, *for one year from and after the 30th day of June*, 1866.' The court will see that it is not 20 per cent. upon their daily pay when paid by the day, nor 20 per cent. upon their monthly pay when paid by the month, nor 20 per cent. upon their annual pay when paid annually, but it is 20 per cent. upon the gross amount of compensation paid them for a year commencing and ending at a time fixed by the law. Clearly if it had been the object of Congress to have limited the operation of the statute to those only who demanded the 20 per cent. from day to day or from month to month, it would have been easy to make the law clear on this subject. But Congress seems to have not only intended, but to have said in language clear and explicit that its purpose was to give to those employés of the Government within the scope of the act 20 per centum upon the gross compensation received during the period of one year between certain dates. The Assistant Attorney General would have these claimants bring separate suits for each day's compensation, or articulate in their petitions by

distinct counts the claim each makes for compensation growing out of each day's or month's service. The law cannot mean this. The debt which the Government incurred by this act was for a gross sum which became due on the 30th of June, 1867. We do not doubt that a liberal construction of the statute (and all such statutes should be liberally construed) would allow the disbursing officers of Government, after the passage of this act, to pay monthly or daily 20 per cent. additional. But in those cases where the Government refused to make payment of any sum, we think clearly it was a debt of a gross amount after the 30th of June, 1867. It does not follow because the language of the act and its spirit would allow of these payments being made during the period named in the act from time to time, that therefore at the end of each day or of each month a distinct debt of the United States was created, and that suit should have been begun within six years from that time.

"The language of the act precludes this view. It is that this compensation shall be computed upon their pay 'for one year from and after the 30th day of June, 1866,' not for each day or each month between the dates of 30th June, 1866, and 30th June, 1867, but for '*one year*.' This view is sustained, we think, by the further provision of the law which is that where persons are not entitled to receive pay for a whole year but shall be so entitled only 'for a part of said year,' this 20 per cent. shall be computed on the amount which the person is entitled to receive. But in this part of the act the court will not fail to observe that here as elsewhere the idea of the legislator seemed to have been to combine the year's salary or the total amount due the person within the year, and upon that to compute the 20 per centum. For there is no where in the act any language which would seem to indicate an indebtedness from day to day or from month to month."

The learned judge, in the opinion filed in these cases,

we think, presents a very clear and accurate view of this question, to which we invite the attention of the court.

Jnrisdiction.

The Chief Justice of the court below, while disclaiming any opinion generally, suggests that the Court of Claims has no jurisdiction. We are at a loss to understand upon what ground he holds this view as he gives no reasons, and as the assistant attorney general has assigned none which have reached us. We suppose, however, this view rests upon the effect of the act of July 12, 1870. 16 stat., p. 250, sec. 4:

"That all acts and joint resolutions, or parts thereof, and all resolutions of either House of Congress, granting extra compensation or pay, be, and the same are hereby repealed, to take effect on the 1st day of July, 1870."

We think the radical error, if this act be relied upon, is, *first*, in supposing the Court of Claims has no jurisdiction where there is no appropriation; or, *second*, in supposing that the repeal of an act destroys rights which have already accrued.

As we understand the law, the Court of Claims derives its jurisdiction of these cases from the act of February 24, 1855, 10 stat., p. 612, sec. 1, and not from the joint resolution of February 28, 1867. The claimants had a contract of service with the United States, and the joint resolution only increased the pay under that contract. They sue on the contract and this it is which gives jurisdiction.

But it may be that it is this part of the contract relating to extra compensation which is held to be repealed, and thus the jurisdiction is ousted. This cannot be. This extra compensation became a part of the contract so soon as offered by Congress, and at the expiration of the year became as much a vested interest as any other portion of the salary or pay.

Congress cannot now destroy this right, except by with-

holding appropriations to pay the judgments of the Court of Claims.

A court will never presume that Congress has forbidden the execution of a contract with government; it must appear in unmistakable language.

The act relied upon does not only not provide for a retroactive operation, but it provides that it shall take effect after July 1, 1870. Surely Congress never intended to destroy rights accrued in 1867. The truth is this act was passed to cut off this general class of extra compensation which had crept into various statutes; the cutting off of which in future Congress thought advisable.

Conclusion.

We assume that this court will adhere to its decisions heretofore made, and assuming this, we feel relieved from discussing all the questions involved in a proper construction of the joint resolution.

At a former hearing of these cases we submitted certain views upon the general questions involved, to which we invite the attention of the court should the whole subject be reopened. Our brief will be found in the case of George H. Miller, No. 204, December Term, 1871.

CHIPMAN & HOSMER,
Attorneys for Appellees.